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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

CW

15 CITY OF ANN ARBOR EMPLOYEES'  
16 RETIREMENT SYSTEM, on Behalf of Itself  
and All Others Similarly Situated,

17 Plaintiffs,

18 vs.

19 ACCURAY INCORPORATED, EUAN S.  
20 THOMSON, ROBERT E. McNAMARA,  
WADE B. HAMPTON, TED TU, WAYNE  
21 WU, JOHN R. ADLER, JR., and ROBERT S.  
WEISS,

22 Defendants.  
23  
24  
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26  
27  
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CV 09 Case No.

33 62

CLASS ACTION COMPLAINT FOR  
VIOLATION OF THE FEDERAL  
SECURITIES LAWS

JURY TRIAL DEMANDED

1 Plaintiff has alleged the following based upon the investigation of Plaintiff's counsel, which  
2 included a review of United States Securities and Exchange Commission ("SEC") filings by Accuray  
3 Incorporated ("Accuray" or the "Company"), as well as regulatory filings and reports, securities  
4 analysts reports and advisories about the Company, press releases and other public statements issued  
5 by the Company, and media reports about the Company, and Plaintiff believes that substantial  
6 additional evidentiary support will exist for the allegations set forth herein after a reasonable  
7 opportunity for discovery.

#### 8 NATURE OF THE ACTION

9 1. This securities class action is brought on behalf of purchasers of Accuray common  
10 stock pursuant or traceable to the Company's Initial Public Offering (the "IPO") on or about  
11 February 7, 2007, as well as purchasers of the Company's common stock between February 7, 2007  
12 and August 19, 2008, inclusive (the "Class Period"), seeking to pursue remedies under Sections 11,  
13 12(a)(2) and 15 of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 20(a) of the  
14 Securities Exchange Act of 1934 ("Exchange Act"), as amended by the Private Securities Litigation  
15 Reform Act of 1995 ("PSLRA") and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

16 2. Defendant Accuray designs, develops, and sells the CyberKnife system, an image-  
17 guided robotic radio surgery system for the treatment of solid tumors. The CyberKnife system  
18 combines continuous image-guidance technology with a compact linear accelerator to deliver high  
19 doses of radiation to a tumor from different directions.

20 3. Defendants (defined below) misrepresented and failed to disclose material  
21 information concerning the quality and realistic likelihood of fulfillment of contracts in Accuray's  
22 "backlog," a figure representing the direct revenue that Accuray expects to receive from the sale and  
23 servicing of the CyberKnife system. As detailed herein, Defendants knew or recklessly disregarded  
24 that at the time they made their statements, potential sales that were accounted for as backlog would  
25 not come to fruition.

26 4. During the Class Period, Defendants repeatedly highlighted Accuray's backlog as a  
27 barometer of the Company's health and an accurate indicator of whether the Company would, or  
28 could, achieve its stated earnings guidance. This practice misled investors by portraying the

1 Company's financial condition and prospects as favorable based on the correspondingly favorable  
2 backlog numbers, when, in fact, just the opposite was true.

3 5. During the Class Period, Defendants issued materially false and misleading  
4 statements regarding the Company's financial performance, including the Company's backlog. As  
5 alleged herein, the true facts, which were known or recklessly disregarded by each of the Defendants  
6 but concealed from the investing public during the Class Period, were as follows:

7 (a) At the time of Accuray's IPO, Accuray changed its definition of backlog to  
8 include both contingent and non-contingent contracts;

9 (b) Throughout the Class Period, Defendants overstated the amount of the  
10 Company's backlog by at least \$127 million;

11 (c) There was a significant risk that a substantial portion of backlog customers  
12 were of high credit risk and would not be able to raise capital to pay for the CyberKnife system;

13 (d) Defendants reported as backlog a large percentage of contingent and  
14 non-contingent orders for the CyberKnife system that did not have a substantially high probability of  
15 being booked as revenue;

16 (e) A significant portion of commissions paid to CyberKnife sales personnel were  
17 earned prior to those potential sales being booked as revenue;

18 (f) Accuray sales personnel entered into contingent contracts for CyberKnife  
19 systems that did not have a substantially high probability of being booked as revenue; and

20 (g) Accuray did not have adequate internal controls and procedures to ensure that  
21 potential orders reported as backlog had a substantially high probability of being booked as revenue.

## 22 JURISDICTION AND VENUE

23 6. The claims asserted herein arise under and pursuant to Sections 11, 12(a)(2) and 15 of  
24 the Securities Act [15 U.S.C. §§77k, 77l(a)(2) and 77o], Sections 10(b) and 20(a) of the Exchange  
25 Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder [17 C.F.R. §240.10b-5].

26 7. This Court has jurisdiction over this action pursuant to Section 22 of the Securities  
27 Act [15 U.S.C. §77v], Section 27 of the Exchange Act [15 U.S.C. §78aa], and 28 U.S.C. §§1331 and  
28 1337.

8. Venue is properly laid in this District pursuant to Section 22 of the Securities Act, Section 27 of the Exchange Act and 28 U.S.C. §1391(b) and (c). Many of the acts charged herein, including the dissemination of materially false and misleading information, occurred in substantial part in this District and Accuray's principal executive offices are located in this District.

9. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### PARTIES

10. Plaintiff City of Ann Arbor Employees' Retirement System purchased Accuray common stock, as set forth in the accompanying certification and incorporated by reference herein, at artificially inflated prices during the Class Period and has been damaged thereby.

11. Defendant Accuray is incorporated in Delaware and headquartered in Sunnyvale, California. The Company designs, develops, and sells the CyberKnife system, an image-guided robotic radio surgery system for the treatment of solid tumors. The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator to deliver high doses of radiation to a tumor from different directions.

12. (a) Defendant Euan S. Thomson, Ph.D. ("Thomson") was President, Chief Executive Officer and a director of Accuray at all relevant times herein. Thomson signed the Registration Statement (defined below).

(a) Defendant Robert E. McNamara ("McNamara") was Senior Vice President and Chief Financial Officer of Accuray at all relevant times herein. McNamara signed the Registration Statement.

(b) Defendant Wade B. Hampton ("Hampton") has served as Senior Vice President, Chief Sales Officer of Accuray since April 2007. Prior to that appointment, Hampton served as Senior Vice President, Worldwide Sales beginning in August 2006.

(c) Defendant Ted Tu ("Tu") was a director of Accuray at all relevant times herein. Tu signed the Registration Statement

1 (d) Defendant Wayne Wu ("Wu") was Chairman of Accuray's Board of Directors  
2 at all relevant times herein. Wu signed the Registration Statement.

3 (e) Defendant John R. Adler, Jr., M.D. ("Adler") was a director of Accuray at all  
4 relevant times herein. Adler signed the Registration Statement.

5 (f) Defendant Robert S. Weiss ("Weiss") was a director of Accuray at all relevant  
6 times herein. Weiss signed the Registration Statement.

7 (g) Thomson, McNamara, Hampton, Tu, Wu, Adler and Weiss are collectively  
8 referred to herein as the "Individual Defendants."

9 (h) The Defendants listed above in (a) – (g) are collectively referred to herein as  
10 the "Individual Defendants."

11 13. Because of the Individual Defendants' positions with the Company, they had access  
12 to the adverse undisclosed information about the Company's business, operations, operational  
13 trends, financial statements, markets and present and future business prospects via internal corporate  
14 documents, conversations and connections with other corporate officers and employees, attendance  
15 at management and Board of Directors meetings and committees thereof and via reports and other  
16 information provided to them in connection therewith.

17 14. It is appropriate to treat the Individual Defendants as a group for pleading purposes  
18 and to presume that the false, misleading and incomplete information conveyed in the Company's  
19 public filings, press releases and other publications as alleged herein are the collective actions of the  
20 narrowly defined group of Defendants identified above. Each of the above officers of Accuray, by  
21 virtue of their high-level positions with the Company, directly participated in the management of the  
22 Company, was directly involved in the day-to-day operations of the Company at the highest levels  
23 and was privy to confidential proprietary information concerning the Company and its business,  
24 operations, growth, financial statements, and financial condition, as alleged herein. Said Defendants  
25 were involved in drafting, producing, reviewing and/or disseminating the false and misleading  
26 statements and information alleged herein, were aware, or recklessly disregarded, that the false and  
27 misleading statements were being issued regarding the Company, and approved or ratified these  
28 statements, in violation of the federal securities laws.

1           15.     As officers and controlling persons of a publicly-held company whose common stock  
2 was, and is, registered with the SEC pursuant to the Exchange Act and the Securities Act, and was  
3 traded on the NASDAQ and governed by the provisions of the federal securities laws, the Individual  
4 Defendants each had a duty to promptly disseminate accurate and truthful information with respect  
5 to the Company's financial condition and performance, growth, operations, financial statements,  
6 business, markets, management, earnings and present and future business prospects, and to correct  
7 any previously-issued statements that had become materially misleading or untrue, so that the market  
8 price of the Company's publicly-traded common stock would be based upon truthful and accurate  
9 information. The Individual Defendants' misrepresentations and omissions during the Class Period  
10 violated these specific requirements and obligations.

11           16.     The Individual Defendants participated in the drafting, preparation, and/or approval  
12 of the various public, shareholder and investor reports and other communications complained of  
13 herein and were aware of, or recklessly disregarded, the misstatements contained therein and  
14 omissions therefrom, and were aware of their materially false and misleading nature. Because of  
15 their Board membership and/or executive and managerial positions with Accuray, each of the  
16 Individual Defendants had access to the adverse undisclosed information about Accuray's financial  
17 condition and performance as particularized herein and knew (or recklessly disregarded) that these  
18 adverse facts rendered the positive representations made by or about Accuray and its business issued  
19 or adopted by the Company materially false and misleading.

20           17.     The Individual Defendants, because of their positions of control and authority as  
21 officers and/or directors of the Company, were able to and did control the content of the various SEC  
22 filings, press releases and other public statements pertaining to the Company during the Class  
23 Period. Each Individual Defendant was provided with copies of the documents alleged herein to be  
24 misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent  
25 their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is  
26 responsible for the accuracy of the public reports and releases detailed herein and is therefore  
27 primarily liable for the representations contained therein.



19. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of itself and all other purchasers of Accuray common stock pursuant or traceable to the Company's IPO, as well as purchasers of Accuray common stock between February 7, 2007 and August 19, 2008, inclusive, who were damaged thereby (the "Class"). Excluded from the Class are Defendants herein, members of the immediate family of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

20. The members of the Class are so numerous that joinder of all members is impracticable. Accuray sold more than 18 million shares in the IPO and throughout the Class Period, and Accuray common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Accuray or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

1           21. Plaintiff's claims are typical of the claims of the members of the Class as all members  
2 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is  
3 complained of herein.

4           22. Plaintiff will fairly and adequately protect the interests of the members of the Class  
5 and has retained counsel competent and experienced in class and securities litigation.

6           23. Common questions of law and fact exist as to all members of the Class and  
7 predominate over any questions solely affecting individual members of the Class. Among the  
8 questions of law and fact common to the Class are:

9                   (a) whether the federal securities laws were violated by Defendants' acts as  
10 alleged herein;

11                   (b) whether statements made by Defendants to the investing public during the  
12 Class Period misrepresented material facts about the business, operations and management of  
13 Accuray; and

14                   (c) to what extent the members of the Class have sustained damages and the  
15 proper measure of damages.

16           24. A class action is superior to all other available methods for the fair and efficient  
17 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
18 damages suffered by individual Class members may be relatively small, the expense and burden of  
19 individual litigation make it impossible for members of the Class to individually redress the wrongs  
20 done to them. There will be no difficulty in the management of this action as a class action.

#### 21                                   SUBSTANTIVE ALLEGATIONS

22           25. Defendant Accuray designs, develops, and sells the CyberKnife system, an image-  
23 guided robotic radio surgery system for the treatment of solid tumors. The CyberKnife system  
24 combines continuous image-guidance technology with a compact linear accelerator to deliver high  
25 doses of radiation to a tumor from different directions.

26           26. Accuray's business model includes three main sources of revenue: (i) product  
27 revenue; (ii) shared ownership revenue; and (iii) services revenue. Product revenue is generated  
28 from the sale of CyberKnife systems, which are capital equipment purchases for hospitals or



1 radiation treatment facilities. Accuray's second source of revenue is its shared ownership program,  
2 whereby a CyberKnife system is placed in a hospital with Accuray retaining the title. The customer  
3 is responsible for building the room and making minimum monthly payments to Accuray. Any  
4 revenue generated over and above those minimum payments is shared between Accuray and the  
5 customer. The third revenue generator is from Accuray's service contracts, which are typically  
6 signed for four- to five-year periods and in most cases include six technology upgrades, when and if  
7 available, during the period.

8         27. The CyberKnife system has a relatively long sales and installation cycle because it is  
9 a major capital item for its customers and usually requires the approval of senior management at  
10 purchasing institutions. The typical sales and installation cycle is 12 to 18 months in duration and  
11 involves multiple steps, which may include pre-selling activity, execution of a letter of intent  
12 ("LOI"), execution of contracts for the purchase or acquisition of the CyberKnife system and  
13 multiyear service plans, and installation of the CyberKnife system. Prior to installation, a purchasing  
14 institution must typically obtain a radiation device installation permit, and in some cases, a  
15 certificate of need, both of which must be granted by state and local government bodies. In addition,  
16 the purchasing institution must build a radiation shielded facility or upgrade an existing facility to  
17 house the CyberKnife system.

18         28. According to Accuray, on average it takes three months from the signing of an LOI to  
19 the execution of a contract. Accuray typically receives a deposit at the time the CyberKnife system  
20 purchase contract is executed, and the remaining balance for the purchase of the CyberKnife system  
21 upon installation. The customer also typically signs a service plan contract at the time of signing a  
22 CyberKnife system purchase contract.

23         29. Upon installation, Accuray recognizes as reserve the CyberKnife system purchase  
24 price minus any specific undelivered elements, typically the fair value of one year of service.  
25 Accuray recognizes the fair value of the first year of service as revenue *pro rata* over the twelve  
26 months following installation.

27         30. The Class Period commences on February 7, 2007. On that date, Accuray filed a  
28 Form S-1/A Registration Statement (the "Registration Statement") with the SEC for the IPO. On or

1 about February 7, 2007, the Prospectus (the "Prospectus") with respect to the IPO, which forms part  
2 of the Registration Statement, became effective and, including the exercise of the over-allotment,  
3 more than 18 million shares of Accuray's common stock were sold to the public at \$18.00 per share,  
4 thereby raising more than \$331 million.

5 31. Both the Company and certain selling stockholders sold shares in the IPO. The  
6 Company sold 10,399,000 shares, including the exercise of the over-allotment, for more than  
7 \$187 million. The selling stockholders, including some of the Individual Defendants, sold 8,000,000  
8 shares, including the exercise of the over-allotment, for approximately \$144 million.

9 32. The Registration Statement and Prospectus contained untrue statements of material  
10 facts, omitted to state other facts necessary to make the statements made not misleading and were not  
11 prepared in accordance with the rules and regulations governing its preparation.

12 33. The Registration Statement described installations and pending installations of the  
13 CyberKnife system and stated, in pertinent part, as follows:

14 We market the CyberKnife system through a direct sales force in the United States  
15 and a combination of direct sales personnel and distributors in the rest of the world.  
16 As of September 30, 2006, we had 83 CyberKnife systems installed at customer sites  
17 and 78 pending installation. Of the 83 systems installed, 52 are in the United States.  
18 For the year ended June 30, 2006, our total net revenue was \$52.9 million, our net  
loss was \$33.7 million and our net cash provided by operating activities was \$25.5  
million. For the quarter ended September 30, 2006, our total net revenue was \$32.8  
million, our net income was \$2.0 million, and our net cash used in operating  
activities was \$2.1 million.

19 34. The Registration Statement described the sales and installation cycle of the  
20 CyberKnife system, in pertinent part, as follows:

21 The CyberKnife system has a lengthy sales and purchase order cycle because it is a  
22 major capital equipment item and requires the approval of senior management at  
23 purchasing institutions. The sales process in the United States often begins with a  
24 letter of intent between us and the customer. After the letter of intent is signed, we  
25 enter into a definitive purchase contract with the customer. Generally following the  
26 execution of the contract, the customer begins the building or renovation of a facility  
27 to house the CyberKnife system, which together with the subsequent installation of  
28 the CyberKnife system, can take approximately 12 months or longer to complete.  
During this period, the customer must build a radiation-shielded facility to house  
their CyberKnife system. In order to construct this facility, the customer must  
typically obtain radiation device installation permits, which are granted by state and  
local government bodies, each of which may have different criteria for permit  
issuance. If a permit were denied for installation at a specific hospital or treatment  
center, our CyberKnife system could not be installed at that location.

Under our revenue recognition policy, we generally do not recognize revenue attributable to a CyberKnife system purchase until after installation has occurred. For international sales through distributors, we typically recognize revenue when the system is delivered to the end user's site. Therefore the long sales cycle together with the timing of CyberKnife system shipments and installations may result in significant fluctuations in our reporting of quarterly revenues. Under our current forms of purchase and service contracts, we receive a majority of the purchase price for the CyberKnife system upon installation of the system. Events beyond our control may delay installation and the satisfaction of contingencies required to receive cash inflows and recognize revenue, such as:

- procurement delay;
- customer funding or financing delay;
- organizational delay caused by customer personnel;
- construction delay;
- delay pending customer receipt of a building or radiation device installation permit; and
- delay caused by weather or natural disaster.

In the event that a customer does not, for any of the reasons above or other reasons, proceed with installation of the system after entering into a purchase contract, we would only recognize the deposit portion of the purchase price as revenue. Therefore, delays in the installation of CyberKnife systems or customer cancellations would adversely affect our cash flows and revenue, which would harm our results of operations and could cause our stock price to decline.

35. The Registration Statement described the Company's backlog, in pertinent part, as follows:

***Backlog***

We define backlog as the sum of the following two components: deferred revenue and future payments that our customers are contractually committed to make, but which we have not yet received. Backlog includes contractual commitments from CyberKnife system purchase agreements, service plans and minimum payment requirements associated with our shared ownership programs.

As of September 30, 2006, our backlog was approximately \$330.2 million, which includes \$145.2 million of deferred revenue and \$185.0 million of contractually committed future payments from customers. Of the total backlog, \$204.8 million represents CyberKnife system sales, and \$125.4 million represents revenue through service plans and shared ownership programs. We anticipate that this backlog will be recognized over the next five years as installations occur, upgrades are delivered and services are provided. Although backlog includes contractual commitments from our customers, we may be unable to convert all of this backlog into recognized revenue due to factors outside our control.

1           36. The statements referenced above in ¶¶33-35 were each materially false and  
2 misleading when made because they failed to disclose and misrepresented the following adverse  
3 facts:

4                   (a) At the time of Accuray's IPO, Accuray changed its definition of backlog to  
5 include both contingent and non-contingent contracts;

6                   (b) Beginning in the fiscal quarter ending March 31, 2007 (at the time of the  
7 IPO), Accuray would report backlog that consisted of both contingent and non-contingent backlog,  
8 thereby increasing the total reported backlog;

9                   (c) Defendants materially overstated the amount of the Company's backlog;

10                  (d) Accuray reported as backlog orders for the CyberKnife system that did not  
11 have a substantially high probability of being booked as revenue;

12                  (e) A significant portion of commissions paid to CyberKnife sales personnel were  
13 earned prior to those potential sales being booked as revenue;

14                  (f) Accuray sales personnel entered into contingent contracts for CyberKnife  
15 systems that did not have a substantially high probability of being booked as revenue;

16                  (g) Accuray did not have adequate internal controls and procedures to ensure that  
17 potential orders reported as backlog had a substantially high probability of being booked as revenue;  
18 and

19                  (h) based on the foregoing, Defendants lacked a reasonable basis for their positive  
20 statements about the Company, its backlog, earnings, operations and prospects.

21           37. On March 15, 2007, Accuray announced its second quarter fiscal 2007 financial  
22 results for the period ended December 30, 2006 in a press release titled "Accuray Incorporated  
23 Reports Second Quarter Fiscal 2007 Financial Results" (the "3/15/07 Press Release"). The 3/15/07  
24 Press Release stated, in pertinent part, as follows:

25           Accuray Incorporated (NASDAQ:ARAY), a global leader in the field of robotic  
26 radiosurgery, today announced financial results for the second quarter ended  
27 December 30, 2006. Total net revenues were \$26.3 million for the quarter ended  
28 December 30, 2006, as compared to \$11.3 million for the quarter ended December  
31, 2005, an increase of 133 percent. The net loss for the second quarter was \$7.3  
million, or \$0.45 per share, compared to a net loss of \$7.9 million, or \$0.50 per share,  
for the same quarter in 2005. The fiscal 2007 second quarter results are consistent

1 with the ranges for revenue and net loss included in the Registration Statement on  
 2 Form S-1 (Reg. No. 333-138622) filed with the U.S. Securities and Exchange  
 Commission in connection with our initial public offering in February.

3 \* \* \*

4 “We are pleased with Accuray’s strong growth in both U.S. and international  
 5 markets,” said Euan S. Thomson, Ph.D., president and chief executive officer of  
 Accuray.

6 \* \* \*

7 As of December 30, 2006, 91 CyberKnife systems had been installed at customer  
 8 sites, up from 83 at the end of the first quarter. This includes 80 systems sold  
 9 directly to customers and 11 placed under shared ownership agreements. Of the 91  
 10 systems installed, 58 are in the United States, 24 in Asia and 9 in Europe. ***Reported  
 backlog at the end of the quarter ended December 30, 2006 was approximately  
 \$328 million, compared to approximately \$330 million at the end of the quarter  
 ended September 30, 2006. Reported backlog includes only contracts which  
 contain no contingencies, or for which all contingencies have been met and does  
 not include signed contracts that have contingencies such as the receipt of certain  
 approvals, financing dependencies, or the formation of certain legal structures.  
 The number of signed contracts with contingencies continued to increase in the  
 quarter ended December 30, 2006. These contingent contracts will be added to  
 backlog once all contingencies have been met.*** [Emphasis added.]

14 38. Also on March 15, 2007, Accuray filed its Form 10-Q with the SEC for the period  
 15 ended December 31, 2006 (the “3/15/07 10-Q”), which contained the financial information reported  
 16 in the 3/15/07 Press Release. The 3/15/07 10-Q described the Company’s backlog and stated, in  
 17 pertinent part, as follows:

18 We define backlog as the sum of the following two components: deferred revenue  
 19 and future payments that our customers are contractually committed to make, but  
 20 which we have not yet received. Backlog includes non-contingent contractual  
 21 commitments from CyberKnife system purchase agreements, service plans and  
 minimum payment requirements associated with our shared ownership programs.  
 Backlog does not include signed contracts that have contingencies such as board  
 approvals, financing dependencies or the formation of certain legal structures.

22 As of December 31, 2006, our backlog was approximately \$327.9 million, which  
 23 includes \$152.3 million of deferred revenue and \$175.6 million of contractually  
 24 committed future payments from customers. Of the total backlog, \$193.2 million  
 25 represents CyberKnife system sales, and \$134.7 million represents revenue through  
 26 service plans and shared ownership programs. We anticipate that this backlog will  
 be recognized over the next five years as installations occur, upgrades are delivered  
 and services are provided. Although backlog includes contractual commitments  
 from our customers, we may be unable to convert all of this backlog into recognized  
 revenue due to factors outside our control.

27 39. The statements referenced above in ¶¶37 and 38 were each materially false and  
 28 misleading when made because of the reasons set forth in ¶36.



40. On May 1, 2007, Accuray announced its fiscal third quarter 2007 financial results for the period ended March 31, 2007 in a press release titled "Accuray Reports Fiscal Third Quarter 2007 Financial Results; Fiscal Third Quarter 2007 Highlights" (the "5/1/07 Press Release"). In connection with its third quarter 2007 results, Accuray announced that it changed its definition of backlog for the fiscal quarter ended March 31, 2007 (and thus prior to the Company's IPO), which previously only included signed contracts without contingencies (*i.e.*, signed non-contingent contracts) as committed future payments. Under the new terms, Accuray redefined backlog to include both signed non-contingent contracts as well as signed contingent contracts that management believed had a "substantially high probability" of being booked as revenue

41. The 5/1/07 Press Release described that the Company changed the definition of backlog and stated, in pertinent part, as follows:

As of March 31, 2007, the Company's total backlog, which the Company now defines as backlog under signed non-contingent contracts as well as backlog under signed contingent contracts that the Company believes have a substantially high probability of being booked as revenue, was approximately \$559 million. This represents a 60 percent increase and a 9 percent increase, respectively, over total backlog computed in accordance with this definition of \$350 million at March 31, 2006 and \$513 million at December 31, 2006. Of the Company's total backlog at March 31, 2007, \$306 million was associated with CyberKnife System purchases and \$253 million was associated with services and other recurring revenues.

Contingencies under customer contracts included in backlog include customer acceptance of the Company's legal terms and conditions of sale, hospital board approvals, customer establishment of necessary financing or legal entities and, in certain U.S. states, government approval of a certificate of need (CON) for the operation of a radiosurgery system. On a quarterly basis, the Company will review each contingent contract to determine whether progress toward satisfaction of contingencies is sufficient to support inclusion of the contract within backlog. Going forward, it is the Company's intention to provide information regarding total backlog in accordance with the definition described above on a quarterly basis.

At the end of the fiscal third quarter 2007, 97 CyberKnife Systems were installed at customer sites. This includes 87 systems sold directly to customers and 10 placed under shared ownership agreements. Of the 97 systems installed, 63 are in the Americas, 25 in Asia and 9 in Europe.

\* \* \*

"Our fiscal third quarter results demonstrate the continued recognition of the CyberKnife System as an effective treatment option for tumors anywhere in the body," said Euan S. Thomson, Ph.D., president and chief executive officer of Accuray. . . . The impressive growth that the CyberKnife System has gained in these applications is driven by our system's unique ability to autonomously track, detect and correct for tumor and patient movement in real-time during the procedure,



1 enabling delivery of precise, high dose radiation with sub-millimeter accuracy. We  
 2 believe these unique capabilities combined with the momentum of our sales  
 organization will continue to drive our success in building the market for  
 radiosurgery.”

3 42. On May 1, 2007, Accuray held a conference call with analysts to discuss the  
 4 Company’s financial performance reported in the 5/1/07 Press Release and to discuss the Company’s  
 5 backlog (the “5/1/07 Conference Call”). On the 5/1/07 Conference Call, Defendant Thomson stated:

6 As an additional indicator of our rate of growth in a quarter of record revenue, our  
 7 total backlog also reached the record level of \$559 million. This represents a 60%  
 increase year-over-year and a 9% increase on a sequential basis.

8 The combination of record revenue and backlog growth within the same quarter  
 9 confirms the acceleration of our business model to broaden the market for  
 radiosurgery, as well as a growing acceptance of the CyberKnife as a premier  
 10 radiosurgery technology.

11 43. On the 5/1/07 Conference Call, Defendant Thomson discussed the change in the  
 12 reporting of the Company’s backlog, in pertinent part, as follows:

13 I’ll now give you a short summary of the reason for the change in our quoted backlog  
 14 metric. Bob McNamara will also be giving you more detail in his report.

15 To position ourselves for ongoing growth and to support the increased volume of  
 customer contracts, we’ve recently streamlined our internal contract process.

16 Historically our approach was to combine discussion of financial and legal terms in a  
 17 single negotiation involving all relevant parties at Accuray and at our customer sites.

18 However, the significant growth in the number of new contracts has guided us to  
 separate discussion of these terms.

19 ***Our sales representatives in the United States now generally negotiate the business***  
 20 ***terms to acquisition and agree to term agreements containing all financial aspects***  
***of the transaction.***

21 ***In parallel, the legal aspects of our contracts have become more standardized and***  
 22 ***any modifications to these terms are discussed subsequent to agreeing the financial***  
***terms of sale.***

23 I can report that this process, as hoped, has proven to be more efficient and has  
 24 assisted us in the expansion of our sales program.

25 Now it’s primarily this shift in our contractual process that has driven the change in  
 26 reported backlog. Our old definition of non-contingent backlog precluded mentions  
 of this new contract format.

27 ***As the prevalence of these new term agreements has grown, it’s become more***  
 28 ***appropriate and indicative of the state of our business to disclose total backlog.***

1 We also believe that the total backlog number now reported is in line with the  
2 industry standard. The timing of this change in quoted backlog strategy really results  
3 from our growing experience and confidence in the new contract process.

4 ***On balance, we feel confident that 90% of the total backlog reported will be  
5 converted to revenue.***

6 ***To aid interpretation of the backlog number, I'd like to point out what might be  
7 considered a fairly obvious point that the total backlog reported this quarter, taken  
8 in conjunction with reported revenue, is a good and reliable indicator that the new  
9 business generated during a given quarter.***

10 The majority of revenue is shipped from backlog. Simultaneously, new contracts  
11 generated by sales activities add to backlog.

12 ***Once again I know this is an obvious point, but it explains my previous statement  
13 that achieving record backlog in the same quarter that we have achieved record  
14 revenue is a very positive indicator of the strength and upward trend in our  
15 business. [Emphasis added.]***

16 44. On the 5/1/07 Conference Call, Defendant McNamara discussed Accuray's backlog  
17 and stated, in pertinent part, as follows:

18 As of March 31, 2007 the company's backlog, which the company now defines as  
19 backlog under signed non-contingent contracts as well as backlog under signed  
20 contingent contracts that the company believes have a substantial high probability of  
21 being booked as revenue, was approximately \$559 million.

22 This represents a 60% increase and a 9% increase, respectively, over total backlog  
23 computed in accordance with the definition of \$350 million at March 31, 2006 and  
24 \$513 million at December 31, 2006.

25 Of the company's total backlog at March 31, 2007, \$306 million was associated with  
26 the CyberKnife system purchases and \$253 million was associated with the  
27 company's Services and other recurring revenues.

28 Contingencies under customer contracts included in backlog include customer  
acceptance of the company's legal terms and conditions of sale, hospital Board  
approvals, customer establishment of necessarily financing or legal entities and in  
certain U.S. States, government approval of the Certificate of Need or CON for the  
operation of a radiosurgery system.

On a quarterly basis the company will review each contingent contract to determine  
whether progress towards satisfaction of contingencies is sufficient to support  
inclusion of the contract within backlog.

We look at a number of factors including any investment made by the customer, the  
progress on contingencies and the level of engagement by the customer.

Depending on the nature of the customer's activities relative to these factors, we will  
include it in backlog. ***We have confidence that at least 90% of the quoted backlog  
will convert to revenue.***

1 Going forward it is the company's intention to provide information each quarter  
2 regarding total backlog, in accordance with the definition I've just described.

3 Recall that our previously reported fiscal second quarter 2007 backlog of \$328  
4 million included only contracts that contained no contingencies or for which all  
5 contingencies had been met.

6 *We believe that our current definition of backlog is a more meaningful metric for*  
7 *Accuray as an indicator of future revenue.*

8 Using this definition, total backlog for our last four fiscal quarters, on an apples-to-  
9 apples basis, is as follows.

10 In fiscal Q3 '06 backlog was \$350 million, in fiscal Q4 '06 backlog was \$432  
11 million, in Q1 2007 fiscal year backlog was \$436 million, in Q2 2007 fiscal year  
12 backlog was \$513 million, and now we've announced that fiscal Q3 2007 backlog is  
13 stated at \$559 million.

14 In terms of roll out, the flow of backlog, meaning the flow of backlog to revenue  
15 realization is really dependent on the nature of the contract. For system revenue we  
16 are dependent on the customer having the facility ready to install.

17 Currently we expect to realize system revenue from backlog within 6 to 18 months.  
18 For Services and Shared Ownership revenue the realization period is typically one to  
19 four years.

20 In addition, we will have revenue from the upside of our Shared Ownership program  
21 over and above the minimum monthly payments included in backlog, and any  
22 contracts that come in and out of backlog.

23 That is to say the contracts are signed and converted to revenue within a 12-month  
24 period. [Emphasis added.]

25 45. On the 5/1/07 Conference Call, Mark Richter, an analyst from Jefferies & Company,  
26 commented that Accuray's backlog "grew nicely in the quarter."

27 46. On the 5/1/07 Conference Call, Defendant McNamara emphasized that Accuray used  
28 backlog as a tool for guidance on expectations for the Company and that analysts should also look to  
backlog when analyzing Accuray:

**Unidentified Participant**

Just some quick questions, one I notice that there's no guidance, can you provide any  
sort of color on expectations for next quarter? Or are you holding off on that?

**Robert McNamara – Accuray Incorporated – SVP, CFO**

We're really holding off on that. What we use as a tool for guidance is really to look  
at the backlog and how it might roll out over the next couple of years.

And so we're currently using that as the metric for future revenue when people build  
their models.

47. On the 5/1/07 Conference Call, Defendants Thomson and McNamara responded to questions and characterized the new total backlog definition as a better metric than the prior definition of non-contingent backlog:

**Michael Cho – Civic Global Healthcare – Analyst**

Hi, a couple quick ones. One is just help us with this transition of giving us new metrics, can you give us what the backlog would have been this quarter using your previous methodology?

**Robert McNamara – Accuray Incorporated – SVP, CFO**

Well you know what we've decided is we are not going to disclose that because we really think that this metric, the total backlog is really a better metric for the business.

**Michael Cho – Civic Global Healthcare – Analyst**

Okay.

**Dr. Euan Thomson – Accuray Incorporated – President, CEO**

It really comes down to we created essentially a contingency and we switched to the term agreements, on balance, may never put the contract into non-contingent backlog until the unit actually ships to the hospital. Because many people are not really satisfying the original criteria, if you follow me.

So it's like we could go straight from a term agreement to a shipment, we see the room is being constructed, the unit's arriving and in the same quarter suddenly it would flip. So it's just not a useful metric any longer for the contract process that we're using.

\* \* \*

**Robert McNamara – Accuray Incorporated – SVP, CFO**

Yes sorry, you know I can tell you that if we had reported on a previous definition, that that number would have increased.

But again what we're trying to do is get away from that number and really give a picture using a better metric, that being the total backlog.

**Michael Cho – Civic Global Healthcare – Analyst**

Okay good. And then will you give us pending units?

**Robert McNamara – Accuray Incorporated – SVP, CFO**

No because, again, what we're doing is we're not going to be discussing contracts per se, but again the dollars associated with backlog we feel is a pretty good metric in terms of what the revenues might be going forward.

48. Analysts reacted positively to Accuray's statements about its backlog. A May 2, 2007 analyst report by Jefferies & Company, Inc. titled "Impressive FY3Q Results; This is The Horse To Bet On In Radiation Oncology!" stated, in pertinent part, as follows:

#### Investment Summary

We would be buyers of ARAY at current levels. We believe the stock will trade higher due to strong 2007 revenue growth, an expanding backlog, and growing CyberKnife unit placements.

\* \* \*

- **Backlog was strong.** The company reported a strong uptake in backlog, going from \$513 million in FY2Q to \$559 million in the current Q. ARAY also announced that it would no longer only be reporting non-contingent backlog, and is now going to release a total backlog figure (which represents a combination of previously differentiated contingent and non-contingent backlog). The company believes that this new backlog recognition policy will give investors improved visibility into future revenue projections. Total backlog will include contingent backlog when management deems that the contingent contract has a high probability of being realized and generating revenue. *We believe that this new backlog number will give a more reliable picture of the company's progress in booking new orders.*
- **Revising Estimates.** We are raising our FY07 revenue and F/T Cash EPS estimate from \$139.5MM and \$0.21 to \$140.9MM and \$0.22, respectively. We are maintaining our FY08 revenue estimate of \$275.5MM but raising our F/T Cash EPS estimate from \$0.82 to \$0.86. [Emphasis added.]

49. On May 14, 2007, JP Morgan hosted an investor lunch and day of meetings with Defendant McNamara and Accuray's contingent backlog was discussed. Details were also disclosed concerning how CyberKnife sales representatives were compensated. A summary of the meeting was reported by JP Morgan in a research report on May 17, 2007, which stated, in pertinent part, as follows:

- **Contingency specifics discussed.** McNamara provided additional details around three primary contingencies, which are resolved after initial contract signing and, generally, a down payment: (1) Hospital board approval – the most common contingency and most likely to be resolved, although the process can typically take up to 6 months depending on the timing on Board meetings; (2) Legal entities (LLC or JV) – which are generally formed by a physician group (e.g., neurosurgeons) that sees profit potential from owning a shared CyberKnife. Interestingly enough, there is no correlation between LLCs/JVs and the Shared Ownership program (overall, LLCs/JVs account for apx. 20% of contingencies); and finally, (3) Certificate of Need (CON)/Certificate of Public Need (COPN) – only for public hospitals (primarily on the East coast), which after making a purchase decision, must receive approval from the State hospital board, a process which can take 24 months. In general, ARAY continues to assume that 90% of orders (contingent or otherwise) will convert into backlog (vs. ~98% for VAR).



- **CyberKnife sales reps paid on a ramping scale.** With backlog conversion times also of interest to investors, Mr. McNamara discussed pay structure for the 25 existing U.S. sales reps (32 in total), who are paid on a ramping scale, meaning that commission per sale increases as rep gets closer to and exceeds predetermined quarterly quotas. In addition, cash payments are made to reps in installments based on milestones, incl. contract signing, initial customer deposit, 10% customer deposit and CyberKnife installation (where ~60% of the commission is paid).

50. Thus, CyberKnife sales representatives earned approximately 40% of their commission on sales before the CyberKnife system was installed and earned commissions on contingent backlog.

51. On August 16, 2007, Accuray announced its fiscal fourth quarter and fiscal year 2007 financial results for the period ended June 30, 2007 in a press release titled "Accuray Reports Record Revenue in Fiscal Fourth Quarter and Fiscal Year Ended 2007; Revenue Growth of 166 Percent Year Over Year; Total Backlog Reaches Record Level of \$619 Million" (the "8/16/07 Press Release"). The 8/16/07 Press Release stated, in pertinent part, as follows:

At the end of fiscal 2007, backlog increased to approximately \$619 million, with approximately \$321 million associated with CyberKnife(R) System contracts and approximately \$298 million associated with services and other recurring revenue. Backlog is defined as signed contracts that the Company believes have a substantially high probability of being booked as revenue.

\* \* \*

*"The Accuray team and I are very pleased with our strong financial performance, including record revenue, fourth quarter profitability and **record backlog**. Accuray's clinical programs and R&D efforts are rapidly expanding utilization of the CyberKnife System, fueling the impressive momentum that Accuray is experiencing today,"* said Euan S. Thomson, Ph.D., president and chief executive officer of Accuray, Incorporated. *"The CyberKnife System is the established brand leader in the rapidly expanding radiosurgery market. Its dramatic growth in extracranial usage, particularly for lung and prostate tumors, is driving greater acceptance among the medical community. **Our strong fourth quarter provides solid momentum as we start an exciting new fiscal year.**"* [Emphasis added.]

52. On August 16, 2007, Accuray held a conference call with analysts to discuss the Company's financial performance reported in the 8/16/07 Press Release and the Company's backlog (the "8/16/07 Conference Call"). On the 8/16/07 Conference Call, Defendant Thomson stressed the strong growth in backlog and stated, in pertinent part, as follows:

So to summarize, we're extremely pleased with our financial and operating performance in the fiscal fourth quarter [and] full fiscal year 2007. We achieved record revenue levels in both periods with dramatic year-over-year increases. *We*



1 *also saw a record year-over-year backlog increase with impressive new contract*  
2 *value being added in the fourth quarter.*

3 In addition, profitability was achieved in the fourth quarter, marking a major  
4 financial milestone of which we're very proud. Bob will provide details of financial  
5 performance in a few minutes, but revenue for the fourth quarter was \$44 million, a  
6 106% increase over the fourth quarter last year. Full-year revenue for fiscal 2007  
7 was \$140.5 million, an increase of 166% over the same period last year. *But*  
8 *backlog, which is the key indicator of future revenue, reached the record level of*  
9 *\$619 million at the end of fourth quarter, growing \$187 million during the fiscal*  
10 *year.*

11 *This growth in backlog has particular significance in a year when revenue also*  
12 *grew to a record level. The combination of revenue increasing to approximately*  
13 *\$140 million and backlog increasing by \$187 million in the same period is a very*  
14 *strong indicator of our current growth profile.* As I will explain in a minute, we  
15 believe that this dramatic growth is driven by changing clinical trends and a  
16 definitive move towards radiosurgery as a treatment of choice for cancer patients. At  
17 the same time, we believe that CyberKnife has now become established as a brand  
18 name in radiosurgery treatment delivery.

19 \* \* \*

20 And again, as expected, we are already seeing the impact of the increasing diversity  
21 of treatments on our sales environment. Radiosurgery throughout the body is now  
22 becoming more mainstream. As the range of application increases, the business case  
23 our sales force presents to our new customers is getting more and more robust. *And*  
24 *as our record backlog indicates, our sales pipeline continues to grow.* [Emphasis  
25 added.]

26 53. On the 8/16/07 Conference Call, Defendant McNamara also stressed the Company's  
27 backlog and explained how backlog can be used to analyze both historical activity and future  
28 activity, stating, in pertinent part, as follows:

29 Now I would like to turn to discuss backlog a little further, how it relates to  
30 economic value created and for guidance purposes, its relation to future revenue.  
31 Let's start with what backlog is. *Backlog is defined as signed contracts that*  
32 *Accuray believes have a substantially high probability of being realized as revenue*  
33 *in the future. It can be used to analyze both historical activity and future activity.*  
34 *Historically, the change in backlog, combined with the revenue recognized, can be*  
35 *used to determine the approximate economic contract value created over the past*  
36 *year.* For example, the change in year-over-year backlog is \$619 million, less the  
37 beginning balance of \$432 million. This difference, \$187 million, plus our annual  
38 revenue of \$140 million that came out of backlog, equals a rough approximation of  
39 the economic value of the contracts signed last year that went into backlog. This total  
40 is \$327 million.

41 *So that's a great way to look at the historical activity at the Company.*

42 *Moving to the future and guidance for going forward, Accuray's backlog provides*  
43 *excellent visibility into future revenue, again, since nearly all revenue comes out of*  
44 *that backlog number.* Total backlog from signed contracts at the end of the fiscal  
45 year is \$619 million. It is comprised of two components – \$321 million associated

1 with CyberKnife System purchases, and \$298 million associated with service  
 2 agreements and the minimum monthly payments from shared ownership programs.  
 3 *Although revenue recognition is dependent primarily upon system installation,*  
 4 *which is in turn dependent upon customer facility readiness, we can use backlog as*  
 5 *a foundation for guidance.* We believe that the CyberKnife System portion of  
 6 backlog generally will be realized over the next 18 months. We expect that the  
 7 recurring component of backlog will be realized over the next 60 months.

8 *Using this as a backdrop and considering that more contracts have been signed in*  
 9 *the second half of 2007 than the first half, we believe revenues for FY '08 should*  
 10 *be between \$250 million and \$270 million.* Given the strength of Q4 going from  
 11 \$37.3 million to \$44 million, or the 18% sequential growth, we would expect first-  
 12 quarter revenues to represent flat to modest growth on a sequential basis but to  
 13 experience accelerated growth as we move through the year. [Emphasis added.]

14 54. On the 8/16/07 Conference Call, Defendant Thomson discussed that the growth in  
 15 backlog was from a diverse group of customers, including large established institutions and groups:

16 **Mark Richter – Jeffries & Co. – Analyst**

17 Clearly, we thought – or \$619 million in backlog was clearly better than we  
 18 suspected or we had modeled for. Can you just talk about what is driving that? As  
 19 well as, if my math is correct, you did about \$104 million in new orders in the  
 20 quarter; where that's coming from, and what is driving that?

21 **Euan Thomson – Accuray Incorporated – President, CEO**

22 Yes, I can take that one. It's really very diverse. I think that what's fundamentally  
 23 fueling it is the clinical diversification of radiosurgery and the fact that CyberKnife  
 24 really is the only whole-body full-time solution for the radiosurgery market. So that  
 25 is the basic fuel that goes into the engine. I think how it materializes in terms of  
 26 customers is also pretty diverse. We're seeing, as we mentioned, hospitals that have  
 27 been established for awhile, clinical demand locally is really driving them towards  
 28 purchase of a second CyberKnife system, and we're mentioning that because it's  
 definitely a trend that we would expect to see continuing.

Also, we're seeing, coming into the market sort of the larger group players, so like  
 some of the – and we're not – as you know, we don't discuss individual contracts per  
 se, but we can talk as a trend that we're getting increased interest from the stand-  
 alone centers and some of the providers of multiple stand-alone systems. So it's  
 really the complete spread; the big, high-end hospitals, community hospitals, the  
 stand-alone centers, it's a very diverse mix.

55. Analysts reacted positively to Accuray's 8/16/07 Conference Call and Press Release.  
 On August 17, 2007, Jefferies & Company, Inc., issued a research report on Accuray titled "FY4Q  
 Results Were Solid; Stereotactic Radiosurgery is the Wave of the Future," which stated, in pertinent  
 part:

**Investment Summary**

1 We would be buyers of ARAY at current levels. We believe the stock will trade  
2 higher due to strong revenue growth, an expanding backlog, robust new orders, and  
3 increasing CyberKnife unit placements.

\* \* \*

- 4 • **Backlog and new orders were strong.** The company reported a strong uptake in  
5 backlog, increasing by \$60MM from \$559MM in FY3Q to \$619MM in FY4Q  
6 (beating our estimate of \$585MM). FY07 backlog grew \$187MM (+43% YoY) from  
7 \$432MM to \$619MM. New orders in FY4Q totaled \$104MM, while new orders for  
8 FY07 totaled \$327.9MM. We believe that an important metric to follow is new order  
9 growth, and ARAY recorded an impressive 31% increase in new orders YoY (from  
10 \$249.9MM in FY06 to \$327.9MM in FY07). The company's new order growth  
11 supports our thesis that demand for CyberKnife system is strong and growing as  
12 more and more radiation oncology departments and radiation therapy centers are  
13 allocating budgetary dollars to the development of stereotactic radiosurgery  
14 programs.

15 56. On September 4, 2007, Accuray filed with the SEC its Form 10-K for fiscal year  
16 2007, the period ended June 30, 2007 (the "9/4/07 10-K"), and reiterated the Company's financial  
17 results reported in Accuray's 8/16/07 Press Release and Conference Call. The 9/4/07 10-K  
18 described the treatment of backlog and stated, in pertinent part, as follows:

19 We previously defined backlog as the sum of the following two components:  
20 deferred revenue and future payments that our customers are contractually committed  
21 to make, but which we have not yet received. Beginning with the quarter ended  
22 March 31, 2007, we revised our definition of backlog to consist of the sum of  
23 deferred revenue, future payments that our customers are contractually committed to  
24 make and signed contingent contracts that we believe have a substantially high  
25 probability of being booked as revenue from CyberKnife system purchase  
26 agreements, service plans and minimum payment requirements associated with our  
27 shared ownership programs. We adopted this new definition of backlog in part  
28 because of the changes in our customer contracting process under which customers  
initially enter into terms agreements setting forth the business and economic terms  
for purchase or acquisition of a CyberKnife system and then have a specified time  
frame in which to negotiate legal terms. Contingencies associated with contingent  
contracts that are included within backlog may include final negotiation and  
agreement upon our legal terms for the purchase or acquisition of the CyberKnife  
system, state or local government approval of a certificate of need for the installation  
of a radiosurgery system, approval by the board of directors of the hospital or other  
purchaser of the system and establishment of financing and legal entities by  
purchasers of systems. We review, on a quarterly basis with respect to each  
contingent contract included in backlog, whether customer engagement and progress  
toward satisfaction of contingencies warrants continued inclusion of the contract  
within backlog.

57. The 9/4/07 10-K also revealed that Accuray's Compensation Committee changed the  
financial metrics to be used in determining bonuses for Accuray's senior executive officers for fiscal  
2008. It was revealed that backlog, which had been recently changed to include both non-contingent

1 and contingent backlog, would be the single largest financial metric for determining the bonuses of  
2 certain senior executives, including Defendants Thomson and Hampton.

3 58. On November 7, 2007, Accuray announced its fiscal first quarter 2008 financial  
4 results for the period ended September 29, 2007 in a press release titled "Accuray Reports Record  
5 Revenue in First Quarter of Fiscal 2008; Record Quarterly Revenue of \$48.6 Million; Backlog  
6 Reaches Record Level of \$642 Million" (the "11/7/07 Press Release"). The 11/7/07 Press Release  
7 stated, in pertinent part, as follows:

8 The first quarter of fiscal 2008 backlog increased by \$23 million from the fourth  
9 quarter fiscal 2007, to approximately \$642 million, with approximately \$351 million  
10 associated with CyberKnife(R) Robotic Radiosurgery System contracts and  
11 approximately \$291 million associated with services and other recurring revenue.  
12 Accuray's backlog is composed of firm, signed contracts that the company believes  
13 have a substantially high probability of being recognized as revenue.

14 Accuray's cash balance at the end of the quarter was \$192 million.

15 "This is the third consecutive quarter where we have achieved record levels of both  
16 revenue and backlog," said Euan S. Thomson, Ph.D., president and chief executive  
17 officer of Accuray Incorporated. "This growth is a great achievement for Accuray  
18 and we believe that it reinforces the medical community's rapid acceptance of the  
19 CyberKnife System."

20 \* \* \*

#### 21 Outlook

22 \* \* \*

23 Based on the current business outlook, Accuray is reiterating its fiscal 2008 revenue  
24 guidance of \$250 million to \$270 million. Accuray expects that revenue growth will  
25 be greater in the third and fourth quarters of fiscal 2008.

26 59. On November 7, 2007, Accuray held a conference call with analysts to discuss the  
27 Company's financial performance reported in the 11/7/07 Press Release (the "11/7/07 Conference  
28 Call"). During the 11/7/07 Conference Call, Defendant Thomson said: "Once again achieving  
another quarter of record backlog and record revenue in the same quarter demonstrates a continued  
success of our sales effort with a very good indication of even more growth to come. A point of note  
is that this is the third consecutive quarter that we have grown both revenue and backlog to record  
levels."

60. Analysts reacted positively to Accuray's 11/7/07 Press Release and Conference Call. On November 8, 2007, Jefferies & Company, Inc. issued a research report on Accuray, which stated, in pertinent part, as follows:

**Investment Summary**

We would be buyers of ARAY. We believe the company's fundamentals remain strong and continue to be encouraged by an expanding backlog, highly favorable reimbursement landscape, impressive top line acceleration and increased interest in the clinical community for the CyberKnife system.

\* \* \*

- **Backlog and new orders were strong.** The company reported a strong uptake in backlog as it increased by \$23MM from \$619MM in FY4Q07 to \$642MM in FY1Q08. New orders in FY1Q08 totaled \$71.6MM. We believe that new order growth is an important metric to follow, and ARAY recorded an impressive 95% increase in new orders YoY albeit against an easy comparable (from \$36.8MM in FY1Q07 to \$71.6MM in FY1Q08). The company's new order growth demonstrates the significant demand for the CyberKnife in the radiation oncology and surgical communities.

61. On November 13, 2007, Accuray filed with the SEC its Form 10-Q for the second fiscal quarter of 2008, the period ended September 29, 2007, and reiterated the Company's financial results reported in Accuray's 11/7/07 Press Release and Conference Call.

62. The statements referenced above in ¶¶ 40-44, 46, 47, 51-54, 56-59 and 61 were each materially false and misleading when made because they failed to disclose and misrepresented the following adverse facts:

(a) Throughout the Class Period, Defendants overstated the amount of the Company's backlog by at least \$127 million;

(b) There was a significant risk that a substantial portion of backlog customers were of high credit risk and would not be able to raise capital to pay for the CyberKnife system;

(c) Defendants reported as backlog a large percentage of contingent and non-contingent orders for the CyberKnife system that did not have a substantially high probability of being booked as revenue;

(d) A significant portion of commissions paid to CyberKnife sales personnel were earned prior to those potential sales being booked as revenue;



(e) Accuray sales personnel entered into contingent contracts for CyberKnife systems that did not have a substantially high probability of being booked as revenue;

(f) Accuray did not have adequate internal controls and procedures to ensure that potential orders reported as backlog had a substantially high probability of being booked as revenue; and

(g) based on the foregoing, Defendants lacked a reasonable basis for their positive statements about the Company, its backlog, earnings, operations and prospects.

63. On January 30, 2008, Accuray announced its fiscal second quarter 2008 financial results for the period ended December 29, 2007 and cut its full-year sales outlook in a press release titled "Accuray Reports Continued Growth in Second Quarter of Fiscal 2008; Fourth Consecutive Quarter of Record Revenue and Backlog" (the "1/30/08 Press Release"). The 1/30/08 Press Release stated, in pertinent part, as follows:

Accuray Incorporated(NASDAQ:ARAY), a global leader in the field of radiosurgery, today announced financial results for the second quarter of fiscal 2008, ended December 29, 2007.

For the second quarter of fiscal 2008, Accuray reported total revenue of \$52.0 million, a 98 percent increase over second quarter fiscal 2007 total revenue of \$26.3 million.

Net income for the quarter ended December 29, 2007 was \$2.3 million, or \$0.04 per diluted share, compared to a loss of \$7.3 million, or a loss of \$0.45 per share, during the same period last year. Shares used in computing fully diluted earnings per share were 61.3 million for the second fiscal quarter of 2008.

Non-cash, stock-based compensation charges for the second fiscal quarter of 2008 were \$4.3 million or \$0.07 per diluted share.

For the period ended December 29, 2007, backlog increased to approximately \$660 million, with approximately \$365 million associated with CyberKnife(R) Robotic Radiosurgery System contracts and approximately \$295 million associated with services and other recurring revenue. Accuray's backlog is composed of firm, signed contracts that the company believes have a substantially high probability of being recognized as revenue.

Accuray's cash balance at the end of the quarter was \$187.5 million.

For the six months ended December 29, 2007, total revenue was \$100.7 million, a 70 percent improvement over the \$59.1 million in total revenue during the same period last year. Net income for the first half of fiscal 2008 was \$4.6 million, or \$0.08 per diluted share, compared to a loss of \$5.3 million, or a loss of \$0.33 per share, for the first half of fiscal 2007.



1 “Accuray continues to experience record-setting growth, with our fourth consecutive  
 2 quarter of increasing revenue and backlog. This sustained growth is a testament to  
 3 the impact that the CyberKnife System is having on meeting the demands for  
 4 extracranial radiosurgery, particularly prostate and lung cancer,” said Euan S.  
 5 Thomson, Ph.D., president and CEO of Accuray. “While this was a positive quarter  
 6 with respect to revenue and backlog growth, we believe that broader credit market  
 7 issues are having a short-term impact on some of our U.S. customers’ purchase and  
 8 installation timelines, as obtaining financing has become more difficult. We remain  
 9 confident in the clinical demand for the Cyber-Knife and our ability to further build  
 10 the market for extracranial radiosurgery.”

#### 11 Outlook

12 The following statements are forward-looking and actual results may differ  
 13 materially. Based upon current economic conditions, specifically the tightening of  
 14 credit markets in the United States, Accuray is adjusting revenue guidance for fiscal  
 15 2008 to be in the range of \$210 million to \$230 million, which would represent  
 16 revenue growth of 50 percent to 64 percent over fiscal 2007.

17 64. Defendants held a conference call on January 30, 2008 to discuss the Company’s  
 18 earnings and operations (the “1/30/08 Conference Call”). During the 1/30/08 Conference Call,  
 19 Defendant Thomson blamed the credit market for the reduction in guidance and stated, in pertinent  
 20 part, as follows:

21 I will now give an overview of clinical, technical and sales developments during the  
 22 quarter. I will finish with an overview of how we believe the near-term tightening of  
 23 the credit markets in the United States has led us to modify our full year revenue  
 24 guidance. I’ll discuss this in more detail before turning the call to Bob McNamara.

25 \* \* \*

26 As Bob will explain in a minute, this increase in backlog also occurred at a time  
 27 when the changing financial environment resulted in us removing several purchased  
 28 contracts from backlog.

\* \* \*

29 While we have continued to grow our revenue, net income and backlog, we now feel  
 30 it’s sensible to adjust our expectations for the remainder of the year. At the start of  
 31 this fiscal year, we stated revenue guidance of between \$250 million and \$270  
 32 million for fiscal year 2007. And we stated that we anticipated flat to moderate  
 33 growth in revenue for the first half of the year. Revenue in Q1 was \$49 million, up  
 34 from a prior quarter value of \$44 million. Q2 increased further to \$52 million. Our  
 35 total year-to-date revenue is in excess of \$100 million. Today, however, we are  
 36 adjusting the revenue guidance for FY 2008 to \$210 million to \$230 million, which  
 37 would represent annual revenue growth of 50% to 64%.

38 The primary reason for this change is that those customers requiring credit to finance  
 39 either their equipment purchase or the construction of their facility, are having  
 40 greater than expected challenges. As a result, some of our U.S. customers who had  
 41 committed to installation timetables have slowed their installation plans. This  
 42 inevitably has affected our revenue forecast for the year.

\* \* \*

1  
2 Additionally, we have always stated that we review backlog on a quarterly basis and  
3 only include those contracts that we feel confident will lead to future revenue. This  
4 quarter we felt it sensible to remove a number of contracts from backlog in order to  
5 give our investors greater visibility into the potential effect of this market adjustment.

6  
7 65. During the 1/30/08 Conference Call, Defendant McNamara stated that “contracts  
8 most affected by the tightening economy were removed” and that those “customers were generally  
9 those whose financing is now delayed or in question.” Defendant McNamara also stated that  
10 approximately \$30 million of orders were taken out of backlog and “[p]retty much” all of those  
11 backlog customers were U.S. freestanding centers.

12  
13 66. In response to the disappointing news about Accuray’s profit and revenue falling  
14 short of analyst estimates, the fact that customers were taken out of backlog, and the reduction of  
15 guidance, on January 31, 2008, the first day of trading after Accuray’s financial results were  
16 reported, shares of Accuray plummeted from a close of \$14.98 per share on January 30, 2008 to a  
17 close of \$9.52 per share (a decline of more than 36%), on extremely high volume of more than 10  
18 million shares.

19  
20 67. On January 31, 2008, a *Bloomberg* article titled “Accuray Plunges as Forecast Misses  
21 Expectations” stated, in pertinent part, as follows:

22 Accuray Inc., maker of the CyberKnife system for radiation surgery, lost a third of its  
23 value in NASDAQ composite trading after the company forecast lower fiscal 2008  
24 sales than analysts expected.

25 The shares dropped \$5.44, or 36 percent, to \$9.54 – the most ever and the second-  
26 biggest percentage loss in U.S. trading. The shares have fallen 67 percent since  
27 peaking at 29.25 on Feb. 9, two days after the initial public offering.

28 Accuray forecast sales of \$210 million to \$230 million in the fiscal year ending June  
29 28, the Synnyvale, California-based company said yesterday in a statement. That  
30 compares with the average estimate of \$264.8 million in a Bloomberg survey of five  
31 analysts. Analyst Junaid Husain at Soleil Securities downgraded the company to  
32 hold from buy today on the “poor” performance this quarter and “too many  
33 uncertainties on the horizon,” he said in a note to investors.

34  
35 68. Analysts covering Accuray’s stock questioned whether credit issues were the real  
36 cause for the reduction in backlog. As stated in a research report dated January 30, 2008 by  
37 Oppenheimer & Co. Inc.:

- **A New Issue Emerges.** ARAY now says the credit markets are hurting their customers' ability to get financing, which has delayed some installations and also eliminated about 7-10 contracts that were in their backlog. *We checked with ARAY's competitors last night and no one seems to be having the same issue (VAR had great results just last week).* As a reminder, only ARAY includes "contingent" orders in its backlog, including a contingency for joint ventures that still need financing. Mgmt would not comment on how much more of backlog could be impacted in the future, and this in our opinion significantly taints any visibility. [Emphasis added.]

69. On April 29, 2008, Accuray announced its fiscal third quarter 2008 financial results for the period ended March 29, 2007 in a press release titled "Accuray Reports Record Revenue in Third Quarter of Fiscal 2008; Fourth Consecutive Quarter of Profitability" (the "4/29/08 Press Release"). The 4/29/08 Press Release stated, in pertinent part, as follows:

For the nine months ended March 29, 2008, total revenue was \$159.4 million, a 65 percent increase over the \$96.5 million in total revenue during the same period last year. Net income for the first nine months of fiscal 2008 was \$5.2 million, or \$0.09 per diluted share, compared to a loss of \$6.1 million, or a loss of \$0.26 per share, for the first nine months of fiscal 2007.

"Accuray's fifth quarter of record-setting revenue is evidence of continued momentum and worldwide demand for our CyberKnife(R) Robotic Radiosurgery System," said Euan S. Thomson, Ph.D., president and CEO of Accuray. "The flexibility of our CyberKnife System is changing the paradigm for cancer treatment, giving physicians the tools to aggressively treat tumors anywhere in the body with pinpoint precision."

#### Outlook

The following statements are forward-looking and actual results may differ materially. Accuray is reaffirming previously announced revenue guidance for fiscal 2008 in the range of \$210 million to \$230 million, which would represent revenue growth of 50 percent to 64 percent over fiscal 2007.

70. That same day, Accuray held a conference call with analysts (the "4/29/08 Conference Call"), reiterated the Company's financial results and disclosed that Accuray eliminated an additional \$58 million in backlog.

71. A research report by Oppenheimer & Co. Inc. dated April 29, 2008 commented on Accuray's financial results and stated:

- **Backlog is Vanishing into Thin Air.** ARAY blamed regulatory uncertainty and customer financing difficulties at free standing clinics for another revision to backlog, which eliminated \$54M in contracts. For those keeping score, that's \$88M in backlog revisions in just the past two quarters. We now estimate LTM new orders (less this \$88M) are down over 30% y/y. Simply put, we think the business is in trouble. Mgmt now says 64% of backlog is non-contingent orders, but we view this backlog as largely irrelevant at this point, and expect more revisions to come.

1           72. In response to the disappointing news about the elimination of orders from backlog,  
2 on April 30, 2008, shares of Accuray fell from a close of \$8.09 per share on April 29, 2008 to a close  
3 of \$7.83 per share (or more than 3%), on extremely high volume.

4           73. On the 4/29/08 Conference Call, Defendants Thomson and McNamara attempted to  
5 minimize the negative impact of the elimination in backlog. Defendant McNamara stressed that the  
6 elimination of backlog orders was restricted to mostly contingent contracts and "90% were non-  
7 hospital deals." Defendant Thomson sated that the Company "generated substantial new backlog."

8           74. Based upon comments from Defendants, analysts continued to rate the Company  
9 favorably and had confidence in the Company's reported backlog. For example, in a research report  
10 dated April 30, 2008, Jefferies & Co. maintained a "Buy" rating on Accuray's stock.

11           75. The statements referenced above in ¶¶ 63-65, 69-70 and 73 were each materially false  
12 and misleading when made because they failed to disclose and misrepresented the following adverse  
13 facts:

14                   (a) Defendants overstated the amount of the Company's backlog by millions of  
15 dollars;

16                   (b) Defendants reported as backlog a large percentage of contingent and  
17 non-contingent orders for the CyberKnife system that did not have a substantially high probability of  
18 being booked as revenue;

19                   (c) Accuray sales personnel entered into contingent contracts for CyberKnife  
20 systems that did not have a substantially high probability of being booked as revenue;

21                   (d) Accuray did not have adequate internal controls and procedures to ensure that  
22 potential orders reported as backlog had a substantially high probability of being booked as revenue;  
23 and

24                   (e) based on the foregoing, Defendants lacked a reasonable basis for their positive  
25 statements about the Company, its backlog, earnings, operations and prospects.

26           76. On August 13, 2008, Jefferies & Co. downgraded Accuray's stock from a "Buy" to a  
27 "Hold" and stated that Accuray was subject to the same forces "that led to backlog revisions in FQ2  
28 and FQ3, which implies that further revisions are possible in FQ4." Prior to this downgrade,

1 Accuray's stock closed at \$8.67 per share on August 12, 2008 and, on August 13, 2008, traded as  
2 low as \$8 per share after the downgrade.

3 77. On August 19, 2008, Accuray announced its fiscal fourth quarter and full year 2008  
4 financial results for the period ended June 28, 2008 in a press release titled "Accuray Announces  
5 Results for the Fourth Quarter and Fiscal Year End 2008; 28 New Contracts Valued at \$115.5  
6 Million Signed in Fourth Quarter" (the "8/19/08 Press Release"). That same day, Accuray held a  
7 conference call with analysts and reiterated the financial results in the 8/19/08 Press Release and  
8 revealed that Accuray removed another \$39 million from backlog. Thus, Accuray removed  
9 approximately \$127 million in backlog during the last three quarters of fiscal 2008.

10 78. A research report by Oppenheimer & Co. Inc. dated August 20, 2008 commented on  
11 Accuray's financial results and stated:

12 SUMMARY

13 Here are the facts: sales and EPS missed Street once again, new orders were down  
14 y/y for the third straight quarter, backlog was "materially" revised downward for the  
15 third straight quarter, and actual unit installations were down for the second  
16 consecutive year in the U.S. (and flat WW for the past three years). How this could  
possibly be spun in a positive light is beyond our own imaginative capabilities, and  
thus we ascribe no confidence in the company's FY09 sales guidance or in remarks  
about new orders. We reiterate our Underperform rating.

17 KEY POINTS

- 18 • ARAY eliminated another \$39M from backlog due to customer cancellations and  
19 other doubtful "stuff", and so about \$127M has now been removed from backlog in  
20 the past three quarters. *We view backlog as largely irrelevant at this point  
(expecting more revisions to come), and would focus attention on installations  
instead.* [Emphasis added.]

21 79. On August 20, 2008, in response to the disappointing news about the elimination of  
22 orders from backlog, shares of Accuray declined from a close of \$7.57 per share on August 19, 2008  
23 to a low of \$6.90 per share (or almost 9%), and eventually closed at \$7.71 on extremely high  
24 volume.

25 80. The market for Accuray common stock was open, well-developed and efficient at all  
26 relevant times. As a result of these materially false and misleading statements and failures to  
27 disclose as set forth above, Accuray common stock traded at artificially inflated prices during the  
28 Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Accuray



1 common stock relying upon the integrity of the market price of Accuray common stock and market  
2 information relating to Accuray, and have been damaged thereby.

3 81. During the Class Period, Defendants materially misled the investing public, thereby  
4 inflating the price of Accuray common stock, by publicly issuing false and misleading statements  
5 and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein,  
6 not false and misleading. Said statements and omissions were materially false and misleading in that  
7 they failed to disclose material adverse information and misrepresented the truth about the Company,  
8 its business and operations, as alleged herein.

9 82. At all relevant times, the material misrepresentations and omissions particularized in  
10 this Complaint directly or proximately caused or were a substantial contributing cause of the  
11 damages sustained by Plaintiff and other members of the Class. As described herein, during the  
12 Class Period, Defendants made or caused to be made a series of materially false or misleading  
13 statements about Accuray's business, prospects and operations. These material misstatements and  
14 omissions had the cause and effect of creating in the market an unrealistically positive assessment of  
15 Accuray and its business, prospects and operations, thus causing the Company's common stock to be  
16 overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading  
17 statements during the Class Period resulted in Plaintiff and other members of the Class purchasing  
18 the Company's common stock at artificially inflated prices, thus causing the damages complained of  
19 herein. When the true facts about the Company were revealed to the market, the inflation in the  
20 price of Accuray stock was removed and the price of Accuray stock declined dramatically, causing  
21 loss to Plaintiff and the other members of the Class.

#### 22 **Additional Scienter Allegations**

23 83. As alleged herein, Defendants acted with scienter in that Defendants knew that the  
24 public documents and statements issued or disseminated in the name of the Company were  
25 materially false and misleading; knew that such statements or documents would be issued or  
26 disseminated to the investing public; and knowingly and substantially participated or acquiesced in  
27 the issuance or dissemination of such statements or Documents as primary violations of the federal  
28 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of



information reflecting the true facts regarding Accuray, their control over, and/or receipt and/or modification of Accuray's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Accuray, participated in the fraudulent scheme alleged herein.

84. Defendants' scienter is further evidenced by unusual and suspicious insider trading, as set forth in the chart below:

Last Name	First Name	Position	Date	Ownership	Shares	Price	Proceeds
ADLER	JOHN	Director	2/8/2007	Indirect	220,000	\$18.00	\$3,960,000
			11/12/2007	Direct	100,000	\$15.91	\$1,591,000
					320,000		\$5,551,000
LINDQUIST	ERIC	Senior Vice President, Chief Marketing Officer	2/8/2007	Direct	48,000	\$18.00	\$864,000
			10/30/2007	Direct	10,000	\$20.00	\$200,000
					58,000		\$1,064,000
RAANES	CHRIS	Senior Vice President, Chief Operating Officer	2/8/2007	Direct	76,000	\$18.00	\$1,368,000
					76,000		\$1,368,000
THOMSON	EUAN	CEO, President, Director	2/8/2007	Direct	200,000	\$18.00	\$3,600,000
					200,000		\$3,600,000
TU	TED	Director	2/8/2007	Indirect	4,084,450	\$18.00	\$73,520,100
			2/8/2007	Indirect	3,953,191	\$18.00	\$71,157,438
			2/13/2007	Indirect	1,878,807	\$27.61	\$51,873,861
					9,916,448		\$196,551,399
WU	WAYNE	Director	2/7/2007	Direct	59,000	\$18.00	\$1,062,000
					59,000		\$1,062,000

#### Applicability of Presumption of Reliance: Fraud on the Market Doctrine

85. At all relevant times, the market for Accuray common stock was an efficient market for the following reasons, among others:

(a) Accuray stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

1 (b) as a regulated issuer, Accuray filed periodic public reports with the SEC and  
2 the NASDAQ;

3 (c) Accuray regularly communicated with public investors via established market  
4 communication mechanisms, including through regular disseminations of press releases on the  
5 national circuits of major newswire services and through other wide-ranging public disclosures, such  
6 as communications with the financial press and other similar reporting services; and

7 (d) Accuray was followed by several securities analysts employed by major  
8 brokerage firms who wrote reports which were distributed to the sales force and certain customers of  
9 their respective brokerage firms. Each of these reports was publicly available and entered the public  
10 marketplace.

11 86. As a result of the foregoing, the market for Accuray common stock promptly digested  
12 current information regarding Accuray from all publicly-available sources and reflected such  
13 information in the price of Accuray stock. Under these circumstances, all purchasers of Accuray  
14 common stock during the Class Period suffered similar injury through their purchase of Accuray  
15 common stock at artificially inflated prices and a presumption of reliance applies.

16 **NO SAFE HARBOR**

17 87. The statutory safe harbor provided for forward-looking statements under certain  
18 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint.  
19 Many of the specific statements pleaded herein were not identified as "forward-looking statements"  
20 when made. To the extent there were any forward-looking statements, there were no meaningful  
21 cautionary statements identifying important factors that could cause actual results to differ materially  
22 from those in the purportedly forward-looking statements. Alternatively, to the extent that the  
23 statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are  
24 liable for those false forward-looking statements because at the time each of those forward-looking  
25 statements was made, the particular speaker knew that the particular forward-looking statement was  
26 false, and/or the forward-looking statement was authorized and/or approved by an executive officer  
27 of Accuray who knew that those statements were false when made.

**COUNT I**

**Violations of Section 11 of the Securities Act  
Against All Defendants**

88. Plaintiff repeats and realleges each and every allegation contained above.

89. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C. §77k, on behalf of the Class, against all Defendants.

90. The Registration Statement and Prospectus for the IPO were inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

91. Accuray is the registrant for the IPO. The Defendants named herein were responsible for the contents and dissemination of the Registration Statement and Prospectus.

92. As the issuer of the securities in the IPO, Accuray is strictly liable to Plaintiff and the Class for the misstatements and omissions.

93. None of the Defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement and Prospectus were true and without omissions of any material facts and were not misleading.

94. By reasons of the conduct herein alleged, each Defendant violated, and/or controlled a person who violated, Section 11 of the Securities Act.

95. Plaintiff acquired Accuray securities pursuant to the Registration Statement and Prospectus.

96. Plaintiff and the Class have sustained damages. The value of Accuray securities has declined substantially subsequent to and due to Defendants' violations.

**COUNT II**

**Violations of Section 12(a)(2) of the Securities Act  
Against All Defendants**

97. Plaintiff repeats and realleges each and every allegation contained above.

98. This Count is brought pursuant to Section 12(a)(2) of the Securities Act on behalf of the Class, against all Defendants.

1           99. Defendants were sellers and offerors and/or solicitors of purchasers of the shares  
2 offered pursuant to the Registration Statement and Prospectus.

3           100. The Registration Statement and Prospectus contained untrue statements of material  
4 facts, omitted to state other facts necessary to make the statements made not misleading, and omitted  
5 to state material facts required to be stated therein. Defendants' actions of solicitation included  
6 participating in the preparation of the false and misleading Registration Statement and Prospectus  
7 and participating in road shows to market the IPO to investors.

8           101. Defendants owed to the purchasers of Accuray's securities, including Plaintiff and  
9 other Class members, the duty to make a reasonable and diligent investigation of the statements  
10 contained in the IPO offering materials, including the Registration Statement and Prospectus  
11 contained therein, to ensure that such statements were true and that there was no omission to state a  
12 material fact required to be stated in order to make the statements contained therein not misleading.  
13 Defendants, in the exercise of reasonable care, should have known of the misstatements and  
14 omissions contained in the IPO offering materials as set forth above.

15           102. Plaintiff and other members of the Class purchased or otherwise acquired Accuray  
16 securities pursuant to and/or traceable to the defective Registration Statement and Prospectus.  
17 Plaintiff did not know, or in the exercise of reasonable diligence could not have known, of the  
18 untruths and omissions contained in the Registration Statement and Prospectus.

19           103. Plaintiff, individually and representatively, hereby offers to tender to Defendants  
20 those securities which Plaintiff and other Class members continue to own, on behalf of all members  
21 of the Class who continue to own such securities, in return for the consideration paid for those  
22 securities together with interest thereon. Class members who have sold their Accuray securities are  
23 entitled to rescissory damages.

24           104. By reason of the conduct alleged herein, these Defendants violated, and/or controlled  
25 a person who violated, Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and members of  
26 the Class who hold Accuray securities purchased in the IPO have the right to rescind and recover the  
27 consideration paid for their securities and hereby elect to rescind and tender their Accuray common  
28

1 stock to the Defendants sued herein. Plaintiff and Class members who have sold their Accuray  
2 securities are entitled to rescissory damages.

3 **COUNT III**

4 **Violation of Section 15 of the Securities Act**  
5 **Against the Individual Defendants**

6 105. Plaintiffs repeat and reallege each and every allegation contained above as if fully set  
7 forth herein.

8 106. This Count is brought pursuant to Section 15 of the Securities Act against the  
9 Individual Defendants.

10 107. Each of the Individual Defendants acted as controlling persons of Accuray within the  
11 meaning of Section 15 of the Securities Act by virtue of his position as a director and/or senior  
12 officer of Accuray. By reason of their senior management positions and/or directorships at the  
13 Company, as alleged above, these Individual Defendants, individually and acting pursuant to a  
14 common plan, had the power to influence and exercised the same to cause Accuray to engage in the  
15 conduct complained of herein. By reason of such conduct, the Individual Defendants are liable  
16 pursuant to Section 15 of the Securities Act.

17 108. Each of the Individual Defendants was a culpable participant in the violations of  
18 Sections 11 and 12(a)(2) of the Securities Act alleged in Counts I and II above, based on their having  
19 signed the Registration Statement and having otherwise participated in the process which allowed  
20 the IPO to be successfully completed.

21 **COUNT IV**

22 **Violation of Section 10(b) of the Exchange Act**  
23 **Against and Rule 10b-5 Promulgated Thereunder**  
24 **Against All Defendants**

25 109. Plaintiff repeats and realleges each and every allegation contained above as if fully set  
26 forth herein.

27 110. During the Class Period, Defendants disseminated or approved the false statements  
28 specified above, which they knew or deliberately disregarded were misleading in that they contained



1 misrepresentations and failed to disclose material facts necessary in order to make the statements  
2 made, in light of the circumstances under which they were made, not misleading.

3 111. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:

4 (a) employed devices, schemes, and artifices to defraud;

5 (b) made untrue statements of material facts or omitted to state material facts  
6 necessary in order to make the statements made, in light of the circumstances under which they were  
7 made, not misleading; or

8 (c) engaged in acts, practices, and a course of business that operated as a fraud or  
9 deceit upon Plaintiff and others similarly situated in connection with their purchases of Accuray  
10 common stock during the Class Period.

11 112. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of  
12 the market, they paid artificially inflated prices for Accuray stock. Plaintiff and the Class would not  
13 have purchased Accuray stock at the prices they paid, or at all, if they had been aware that the  
14 market prices had been artificially and falsely inflated by Defendants' misleading statements.

15 113. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and  
16 the other members of the Class suffered damages in connection with their purchases of Accuray  
17 common stock during the Class Period.

## 18 **COUNT V**

### 19 **Violation of Section 20(a) of the Exchange Act** 20 **Against the Individual Defendants**

21 114. Plaintiff repeats and realleges each and every allegation contained above as if fully set  
22 forth herein.

23 115. The Individual Defendants acted as controlling persons of Accuray within the  
24 meaning of Section 20(a) of the Exchange Act. By reason of their positions as officers and/or  
25 directors of Accuray, and their ownership of Accuray stock, the Individual Defendants had the  
26 power and authority to cause Accuray to engage in the wrongful conduct complained of herein.  
27 Accuray controlled each of the Individual Defendants and all of its employees. By reason of such  
28

1 conduct, the Individual Defendants and Accuray are liable pursuant to Section 20(a) of the Exchange  
2 Act.

3 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

4 A. Determining that this action is a proper class action, designating Plaintiff as Lead  
5 Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil  
6 Procedure and Plaintiff's counsel as Lead Counsel;

7 B. Awarding compensatory damages in favor of Plaintiff and the other Class members  
8 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'  
9 wrongdoing, in an amount to be proven at trial, including interest thereon;

10 C. With respect to Count II, Ordering that the IPO be rescinded;

11 D. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this  
12 action, including counsel fees and expert fees; and

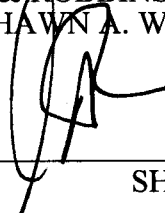
13 E. Such other and further relief as the Court may deem just and proper.

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury.

16 DATED: July 22, 2009

COUGHLIN STOIA GELLER RUDMAN  
& ROBBINS LLP  
SHAWN A. WILLIAMS (213113)



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Attorneys for Plaintiff

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**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

  
\_\_\_\_\_  
ATTORNEY OF RECORD FOR PLAINTIFF  
SHAWN A. WILLIAMS